



March 18, 2013

Between the sequester, the FY'13 Continuing Resolution and the FY'14 House and Senate Budget Resolutions, Congress has been very busy these past two weeks. However, that activity has also made it very confusing to keep track of the funding implications for critical infrastructure programs potentially affected by all three. Here is a breakdown of the key activity.

Sequestration – Despite the fact that the government-wide, across-the-board cut was never intended to actually go into effect – it did so on March 1. The result is an approximately 5% cut on almost all domestic discretionary programs for FY'13, the current fiscal year. Although grant programs funded with revenue from the Highway and Aviation Trust Funds (highway, transit formula and AIP programs) are exempt from sequestration, other programs such as FTA's New Starts/Small Starts, Amtrak Operations and Capital, FAA Operations, Hurricane Sandy Emergency Relief, etc. are impacted. The original expectation was that Congress would nullify the sequester or at least provide agencies with some flexibility on where to take the cuts when they debated the second FY'13 Continuing Resolution (CR), but that did not happen. The cuts imposed are now in place for FY'13 and the reduced spending levels become the baseline for future years unless Congress acts to lift them.

FY'13 Continuing Resolution – Last fall, Congress opted to pass a six-month Continuing Resolution through March 27, 2013, which kept most program funding at the lower FY'12 levels, instead of trying to pass the 12 individual federal agency FY'13 appropriations bills before the November elections. With expiration of the CR looming and Congress leaving for a two-week recess on March 22, the House last week passed another CR through the end of the fiscal year, September 30, 2013. Unfortunately, the House version of the CR (HR 933) funds all domestic discretionary and defense programs at the lower levels required by the sequester and does not provide agencies any flexibility to manage the cuts. Highway and transit Trust Fund programs, while not affected by the sequester, are proposed in the House CR to be cut by more than \$700M below MAP-21 authorized levels for FY'13.

Late last week, the Senate began debate on a substitute version of the House CR and is in the process of considering amendments to it. Here is a [link](#) to information about the Senate CR. Contrary to expectations, the Senate also did not restore the sequester funding cuts for most federal programs, but it did reverse the House CR cuts to the Highway Trust Fund programs, funding them at their MAP-21 authorized levels, a huge victory for the industry.

The Senate hopes to finish debate and pass the CR later tonight. The bill will then go back to the House for final approval. Since the two bills are not significantly different overall, the hope is that the House will agree to the Senate version and then the bill will go to the President to sign (which he is expected to do). However, if some of the more controversial amendments pending on the Senate floor pass, such as amendments related to Amtrak funding and restoring funding for the FAA's contract tower program, the House could vote to



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drop them and then pass the bill back to the Senate again, extending the debate for several days.

Neither the House nor the Senate versions of the US DOT CR include specific funding allocations for projects under the FTA New Starts/Small Starts program. Once a final bill is signed into law, FTA will have the discretion to allocate these traditionally, congressionally earmarked funds. The significant cuts to this General Funded program will make funding any projects without an existing Full Funding Grant Agreement very difficult and may even require cutting some FFGA projects.

FY'14 Budget Resolution – Even though Congress has not yet completed action on funding for the remainder of FY'13, work has already begun on the FY'14 Budget Resolution. The Budget Resolution is a non-binding “blueprint” which provides guidance for the appropriations committees as they draft their FY'14 federal agency appropriations bills. It provides revenue and outlay assumptions over ten years.

Usually, the annual budget process kicks off when the White House releases its budget request in early February. This year the White House's recommendations are not expected to be released until April 9 because the Administration has been preoccupied with the sequester and completing the FY'13 bill. However, Congress cannot wait for the Administration because as part of the January agreement to temporarily increase the debt ceiling, the House and Senate must pass their respective FY'14 Budget Resolutions by April 15 or face a loss of pay.

House Budget Committee Chairman Paul Ryan (R-WI) introduced a House Budget Resolution last week which is similar to those he has drafted in past years. It was quickly passed by the House Budget Committee and will come to the floor this week. Its priority is balancing the federal budget entirely through spending cuts. Building on his past statements, Ryan is highly critical of the highway and transit programs saying, “The mechanisms of federal highway and transit spending have become distorted, leading to imprudent, irresponsible, and often downright wasteful spending. Further, however worthy some highway projects might be, their capacity as job creators has been vastly oversold....”. His budget requires that any future transfers of General Funds to the Highway Trust Fund must be offset with cuts in other spending. While no programmatic estimates have been provided, it is thought that the Ryan budget would entail cuts in the range of 25% from current levels for infrastructure programs.

The Senate Budget Resolution will be debated on the Senate floor later this week, once the CR is completed. The Senate version is much more favorable to infrastructure programs. It recommends a \$50B immediate transportation investment, \$10B for an infrastructure bank, and “reserve” funds to allow for general infrastructure and water infrastructure spending increases (if the Finance Committee identifies a funding source to pay for them).



Because the two Resolutions are so different in approach, it is unlikely that they will ever be reconciled.

Debt Ceiling – In late January, Congress agreed to support a temporary, three-month increase in the debt ceiling in order to avoid a government default. The ceiling will need to be addressed again very shortly. At one time, many thought the next debt ceiling bill would become the vehicle for a “grand bargain” that would revisit the sequester, reform the tax code, cut entitlements, and perhaps even include a gas tax increase, but that looks unlikely now. It is still possible that Congress may revisit these issues, particularly tax reform, later this fall, which could become the vehicle for a transportation revenue increase.

MAP-21 Implementation

MAP-21 Oversight – The House T&I Committee held a hearing on implementation of the MAP-21 authorization bill on March 14. Here is a [link](#) to background materials on the hearing and the testimony from the Administrators of FHWA, FTA, FMCSA, and NHSTA.

Transit Provider Representation in MPOs – FTA is hosting a national online dialogue on MAP-21 provisions requiring representation by providers of public transportation in Metropolitan Planning Organizations (MPOs). Here is a [link](#) to the Dialogue which closes on March 25.

New Categorical Exclusions (CEs) – On February 28, FHWA/FTA issued an NPRM in the Federal Register requesting comments by April 29 on the creation of two new CEs. Sections 1316 and 1317 of MAP-21 encourage the expansion of CEs in an effort to streamline project construction. The new exclusions are for projects being built within an existing right-of-way and projects involving less than \$5M in federal funds or with a total estimated cost of not more than \$30M and federal funds comprising less than 15% of the total project cost. Here is a [link](#) to the Notice.

Categorical Exclusions for Emergency Actions – On February 19, FHWA/FTA issued a Final Rule per MAP-21 Section 1315 expanding the types of existing CEs for emergency actions to include repair of transportation facilities damaged by an incident resulting in an emergency declaration. Here is a [link](#) to the Notice.

Other News

WRDA – Later today, the Senate Environment and Public Works Committee is expected to introduce a bi-partisan Water Resources Development Act (WRDA) authorization bill to fund Corps of Engineer projects. The bill will be marked up by the EPW Committee on Wednesday, March 20 at 10:00am. The bill addresses levee and dam safety, inland waterways, extreme weather events, TIFIA-like innovative financing, and the Harbor Maintenance Trust Fund. Here is a [link](#) to the full text of the Senate bill. A summary of the bill will be available shortly.



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FTA Joint Development – FTA released the long awaited draft Circular on Joint Development. Here is a [link](#) to the Circular. Comments are due by April 5.

FTA Program Management – FTA has withdrawn its proposed rule on Program Management pending consideration of programmatic changes authorized in MAP-21.

Sandy MOA – FTA and FEMA signed a Memorandum of Agreement (MOA) on how they will coordinate to implement the new Hurricane Sandy emergency relief efforts. FTA is expected to issue a Federal Register notice in the next several weeks outlining how the newly authorized and funded Emergency Relief program will allocate funding. Here is a [link](#) to the MOA.

Rail Hearing – The House T&I Railroad Subcommittee held a hearing on the importance of freight and passenger rail to the US economy on March 5. Here is a [link](#) to background on the hearing and the witness testimony which included AAR, Amtrak, UTU and States for Passenger Rail.

AASHTO Database of State Transportation Finance and Governance – The database provides detailed state profiles which include revenue tools, financing mechanisms and governance structures in both mapped and tabular forms. Here is a [link](#) to the new Online Database which was developed for AASHTO by Parsons Brinckerhoff.

Additional information and materials can be found on the PB Transportation Update website at www.PBTransportationUpdate.com